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# Arizona Regional Multiple Listing Service, Inc. Content License Agreement

**Brokerage Firm for its own Proprietary Data**

**ATTENTION BROKERAGE FIRM / LICENSEE**:

This Agreement provides for a broad license grant to you and your Consultants that sign this Agreement. Because the Licensed Data consists primarily of your own listing data, this Agreement imposes upon you - and not upon ARMLS - substantially all obligations with respect to the use and monitoring of, and the preservation of the integrity of, the Licensed Data. To the extent that you want to impose any limits on your Consultants or other third parties with respect to the Licensed Data, you need to contract directly with them for such limitations.

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# Content License Agreement

# Brokerage Firm for its own Proprietary Data

This **Agreement** (this “**Agreement**”) is made and entered into by and between Arizona Regional Multiple Listing Service, Inc. (“**ARMLS**”), with offices at 130 S Priest Drive, Suite 101, Tempe, Arizona 85281-2593; the real estate brokerage firm listed on the signature page below (“ “**Licensee**”); and each individual or business association, whether one or more, identified as “Consultant” on the signature page below, if any (severally and collectively, “**Consultant**”).

DEFINITIONS

1. For purposes of this Agreement, the following terms shall have the meanings set forth below.

**ARMLS Data:** All data entered into the ARMLS’s databases by Subscribers and ARMLS (including text, photographs, and all other data formats now known or hereafter invented), including without limitation all data relating to real estate for sale, previously sold, or listed for sale and data relating to Subscribers. The ARMLS Data includes, without limitation, the Licensed Data.

**Confidential Information:** “Confidential Information” means information and material proprietary to the disclosing party, or designated “confidential” by the disclosing party, and not generally known to the public that the receiving party may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether in oral, visual, audio, written or other form): (a) all ARMLS Data, other than the Licensed Data (for purposes of this Agreement, the Licensed Data shall not be considered to be Confidential Information); (b) IP addresses, access codes and passwords; (c) any information the disclosing party obtains from any third party that the disclosing party treats as proprietary or designates as Confidential Information, whether or not owned or developed by the disclosing party; and (d) any information designated as confidential or private from time to time by any applicable state, federal, local or other law, regulation or directive. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; is independently developed by the receiving party; is received from a third party who has lawfully obtained and disclosed it without breaching any confidentiality agreement; or is already known by the receiving party at the time of its disclosure.

**Data Interface:** The transport protocols and formats provided by ARMLS for use by Licensee and Consultant, which ARMLS may modify in its sole discretion from time to time.

**Effective Date:** The date upon which this Agreement is fully signed and accepted by ARMLS, which date is the date set forth immediately below the ARMLS signature block to this Agreement.

**Licensed Data:** That subset of the ARMLS Data consisting solely of the data entered into the ARMLS databases at any time and from time to time by Licensee, in Licensee's capacity as listing broker, with respect to Licensee's own listings.

**Subscriber:** Any real estate broker, appraiser, or real-estate-related business professional that purchases multiple listing services from ARMLS.

LICENSE

2. ARMLS grants to Licensee and, subject to the following sentence, to Consultant a nonexclusive, royalty-free, perpetual license to use, copy, distribute, display, and create derivative works of the Licensed Data, both (i) during the term of this Agreement, subject at all times to the terms and restrictions of this Agreement and (ii) following the termination of this Agreement, on the terms set forth below in this paragraph. Consultant acknowledges that the foregoing license grant to Consultant is further subject to any limitations or restrictions imposed by Licensee on said license grant in any separate agreements between Licensee and Consultant; provided that ARMLS shall not be bound by any such agreements, and ARMLS shall have no obligation to monitor compliance by Consultant with any such agreements. Following the termination of this Agreement, ARMLS shall have no further obligations with respect to the license provided for in this paragraph and no further obligation to provide access to the Licensed Data, but said license shall remain subject to all of the terms and restrictions of this Agreement applicable to Licensee and Consultant, and each of Licensee and Consultant acknowledges and agrees that Licensee and Consultant shall continue to be bound by all such terms and restrictions. This license is not a sale, assignment, and. ARMLS retains all rights not expressly granted herein. ARMLS shall not assess any data license fee for the license provided for in this paragraph.

DATA ACCESS

3. During the term of this Agreement, and subject to the terms set forth herein, ARMLS shall provide to Licensee and Consultant (a) access to the Licensed Data via the Data Interface; and (b) seven days’ advance notice of changes to the Data Interface. ARMLS may use a third party contractor, determined in ARMLS’s sole discretion, to facilitate the data access and any other responsibilities or rights of ARMLS under this agreement.

ACKNOWLEDGEMENTS OF LICENSEE AND CONSULTANT

4. Licensee and Consultant acknowledge that ARMLS provides the Licensed Data on an as-is, as-available basis. ARMLS shall not be liable to Licensee or Consultant for any claim arising from inaccuracies in the Licensed Data or any failure, whether on the part of Licensee or of ARMLS, to update the Licensed Data promptly. In addition, Licensee and Consultant acknowledge that the Licensed Data includes information input directly by Licensee and possibly other third parties into ARMLS's databases. ARMLS has no liability for any errors in any such information input by Licensee or any third parties, and ARMLS has no responsibility to monitor the Licensed Data for such errors.

5. Licensee and Consultant are solely responsible for any liability or loss of goodwill associated with problems in data integrity, data accuracy, or timeliness arising from Licensee’s or Consultant's use of the Licensed Data.

6. Licensee and Consultant warrant that any use of the Licensed Data by Licensee and Consultant will not constitute infringement of the patent or other intellectual property rights of any third party.

7. Consultant shall not challenge or take any action inconsistent with Licensee's and ARMLS’s ownership of or rights in the Licensed Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

CONFIDENTIAL INFORMATION

8. Each party shall protect the Confidential Information with the same degree of care it takes to protect its own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if law, court order, or regulation requires such disclosure; provided, however, that party makes commercially reasonable efforts to notify the other party in writing in advance of such disclosure.

9. Within five days after the termination of this Agreement, each party shall return to the other party all Confidential Information and all other materials provided by the other party hereunder. Licensee and Consultant also shall also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of either party, an officer of the other party shall certify in writing that all materials have been returned and all magnetic or computer data have been destroyed. The parties acknowledge that the foregoing confidentiality provisions do not apply to the Licensed Data, and the parties shall be entitled to retain any Licensed Data in accordance with the license provided herein for such data.

TERM AND TERMINATION

10. The term of this Agreement begins on the date that ARMLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) 30 days after either party’s notice to the other of its intent to terminate; (b) 10 days after either party’s notice to the other that the other has breached this Agreement, provided the breach remains uncured; (c) immediately upon any party’s notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; or (d) immediately with respect to Consultant upon Licensee's notice to ARMLS and Consultant that Licensee has elected, for any reason, with or without cause, to terminate Consultant's rights under this Agreement.

GENERAL PROVISIONS

11. **Applicable law**. The laws of the State of Arizona shall govern this Agreement and its interpretation. Any action to enforce or interpret this Agreement shall have venue in Maricopa County, Arizona, and the parties hereby submit to personal jurisdiction in that venue.

12. **Survival of Obligations**. Following the termination or expiration of this Agreement, unless the parties mutually agree in writing to terminate the rights ot Licensee and Consultant to use the license granted pursuant to Paragraph 2 following termination or expiration of this Agreement, all of the requirements and obligations of Licensee and Consultant (but not ARMLS) pursuant to this Agreement shall survive the termination or expiration of this Agreement.. Following both (i) the termination or expiration of this Agreement and (ii) the mutual written agreement of the parties to terminate all further rights of Licensee and Consultant to use the license granted pursuant to Paragraph 2 following the termination or expiration of this Agreement, Paragraphs 1, 4 though 9 and 11 through 28 (as applicable) shall survive termination or expiration of this Agreement and the license.

13. **Remedies**. Each party shall have all remedies available under this Agreement or otherwise available at law or in equity, subject to the limitations on remedies set forth in this Agreement.

14. **Limitation of liability/exclusion of warranties.**

(a) **In no event shall ARMLS be liable to Licensee OR CONSULTANT for any indirect, special, incidental, consequential or punitive damages of any kind whatsoever arising from any breach of this Agreement, even if ARMLS has been advised of the possibility of such damages; Licensee’s AND CONSULTANT'S sole remedies against ARMLS hereunder shall be termination of this Agreement and direct damages not in excess of the amounts licensee AND CONSULTANT HAVE paid to ARMLS hereunder in the 12 months immediately preceding the first event giving rise to any claim For breach. ARMLS disclaims ALL representations and warranties except those expressly set forth in this Agreement. This paragraph sets out licensee’s AND CONSULTANT'S EXclusive remedies against armls.**

**(b)** Licensee and Consultant agree to assert any claim, damage or cause of action arising out of or related to this Agreement or any Confidential Information only against ARMLS, and not against any of ARMLS’ licensors, affiliates, shareholders, client boards or associations, officers, directors, employees, agents, or representatives or ARMLS Subscribers. As a condition of Licensee’s and Consultant’s entering into this Agreement and the rights granted to Licensee and Consultant, Licensee and Consultant irrevocably waive all such claims against any of ARMLS’ licensors, affiliates, shareholders, client boards and associations, officers, directors, employees, agents or representatives or ARMLS Subscribers

(c) **EXCEPT FOR ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, ARMLS EXPRESSLY DISCLAIMs AND makes no representations or warranties of any kind, whether express, implied OR STATUTORY, including any implied or other warranties: (i) OF merchantability, of fitness for a particular purpose, non-infringement, workmanlike effort, quality, accuracy, timeliness, completeness, RELIABILITY, title, quiet enjoyment, no encumbrances, no liens, or SYSTEM INTEGRATION; (ii) OF CONFORMANCE TO ANY DEMONSTRATION OR PROMISE BY ARMLS; (iii) ARISING THROUGH COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, OR (iv) THAT ACCESS TO OR USE OF THE LICENSED DATA WILL BE UNINTERRUPTED, ERROR FREE OR COMPLETELY SECURE.**

15. **Dispute Resolution; Attorney’s fees**.

(a) Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the “Arbitration Rules”), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Arizona located in Maricopa County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to arbitration.

(b) If any party prevails in any action to enforce or interpret this Agreement or any provision hereof, it shall be entitled to its reasonable attorney’s fees and costs for such legal action.

16. **Indemnification.** Subject to Paragraph 14, in the event any party breaches any provision of this Agreement, that party (the “Indemnifying Party”) shall indemnify and defend the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the “Indemnified Parties”), against any and all losses, damages, and costs (including reasonable attorneys’ fees) arising from each claim of any third party resulting from the Indemnifying Party’s breach or arising from any unauthorized use of any of the Licensed Data or Confidential Information made available to Licensee pursuant to this Agreement. Licensee shall indemnify and defend ARMLS, customers of ARMLS, and Subscribers against any and all losses, damages, and costs (including reasonable attorneys’ fees) arising from any third-party claim of intellectual property infringement relating in any way to the Licensed Data. The Indemnified Parties shall (a) promptly notify the Indemnifying Party in writing of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party’s expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party’s expense, in defending or settling any such claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party’s expense.

17. **Notice.** All notices to be given under this Agreement shall be mailed via certified mail, sent via overnight courier (with a nationally recognized courier service), or electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission. Licensee also shall provide to ARMLS the key contact information set forth in Exhibit A.

18. **No Waiver**. No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the party who is alleged to have waived its rights or to have agreed to a modification.

19. **No Assignment**. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement (each a “Transfer”) to any other party without the prior written consent of the other party. Any purported Transfer in contravention of this paragraph is null and void.

20. **Entire Agreement; Amendment**. This Agreement, including the exhibits attached hereto, contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same subject matter. ARMLS may amend this Agreement by providing 30 days’ advance notice of the amendment to Licensee and Consultant; if Licensee rejects the amendment, then Licensee shall have the right to deem the 30-day notice of amendment as a notice of termination, in which event this Agreement shall be deemed terminated at the end of the 30-day notice period; if Licensee continues to use the Data Interface or the Licensed Data after the expiration of the 30-day notice period, Licensee will be deemed to have agreed to the terms as amended.

21. **Relationship of the Parties**. The relationship of ARMLS to Licensee and Consultant, respectively, is that of independent contractor. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of ARMLS or have any authority to make any agreements or representations on the behalf of ARMLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

22. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same document.  Signatures of Parties on copies transmitted by facsimile or electronic mail shall be considered as signed original documents.

23. **Severability.** Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event a court having jurisdiction over the parties holds any provision of this Agreement invalid or unenforceable, the parties shall negotiate in good faith to replace the invalid or unenforceable provision, if possible, with a valid provision that most closely approximates the intent and economic effect of the invalid provision. If any provision of the limitation of liability, exclusion of warranty, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate unless the parties agree to the contrary.

24. **Precedence.** In the event of any conflict between the terms of the main body of this Agreement and any Exhibit to this Agreement, the terms of the body of the Agreement shall prevail.

The remainder of this page (except the page footer) is left blank intentionally.

In consideration of the mutual covenants set forth in this Agreement, the parties affirm and adopt this Agreement by setting their signatures below.

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| --- | --- |
| **ARMLS**Arizona Regional Multiple Listing Service, Inc.   Signature Paul Kriewall, Director of Risk Management NameDate:  (the above date is the Effective Date of this Agreement) | **LICENSEE** {---Vendor Company Name---}   Signature of owner or officer {---Designated Broker Name---}, {---Designated Broker MLS ID---} Name of Designated Broker or OfficerDate:  |

|  |  |
| --- | --- |
| **CONSULTANT** {---Consultant 1 Company Name---}   Signature of owner or officer {---Consultant 1 Signatory---} Name of owner or officerDate:  |  |

# ARMLS Content License Agreement

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Exhibit A: Key Contact Information for Parties

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| --- | --- | --- | --- |
|  | **Party 1 (ARMLS)** | **Party 2 (Brokerage)** | **Party 3 (Consultant)** |
| Company Name: | ARMLS | {---Vendor Company Name---} | {---Consultant 1 Company Name---} |
| Mailing Address: | 130 S Priest Drive #101Tempe, AZ 85281-2593 | {---Street1---}, {---Street2---},{---City---}, {---State/Province---}, {---Postal Code---} | {---Consultant 1 Mailing Address---} |
| **Technical Contact Person:** | RETS Administrator | {---Firm Technical Contact Person---} | {---Consultant 1 Technical Contact Person---} |
| E-mail: | RETS@ARMLS.com | {---Firm Technical Contacts Email Address---} | {---Consultant 1 Technical Contact Email Address---} |
| Telephone: | 480.303.7186 or 480.303.7189 | {---Firm Technical Contact Phone Number---} | {---Consultant 1 Technical Contact Phone Number---} |
| **Administrative Contract Person**: | Contract Administrator | {---Firm Contract Admin Person---} | {---Consultant 1 Contract Admin Person---} |
| E-mail: | Contracts@ARMLS.com | {---Firm Contract Admin Email Address---} | {---Consultant 1 Contract Admin Email Address---} |
| Telephone: | 480.303.7180 | {---Firm Contract Admin Phone Number---} | {---Consultant 1 Contract Admin Phone---} |
| **Additional Persons to be notified (Email)** | N/A |  |  |